CC Traffic and Property Management Company LLC *and* Teamsters Local Union No. 727. Case 13–CA–215998

September 24, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent, CC Traffic and Property Management Company LLC, has failed to file an answer to the amended complaint. Upon a charge and amended charge filed by Teamsters Local Union No. 727 (the Union) on March 6 and August 2, 2018,[1] respectively, the General Counsel issued a complaint on July 18 and an amended complaint on August 2, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On January 15, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On January 18, 2019, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 30, and June 19, 2019, the Board reissued the Order transferring the proceeding and the Notice to Show Cause to ensure service on the Respondent's counsel and its new counsel, respectively. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown.[2] In addition, the amended complaint affirmatively stated that unless an answer was received by August 17, the Board may find, pursuant to a motion for default judgment, that the allegations in the amended complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 22, notified the Respondent that unless an answer was received by August 27, a motion for default judgment would be filed. The Respondent's counsel, in a telephone conversation with the Region on August 24, promised to file an answer by August 27. After no answer was filed on that date, the Region left a voicemail with the Respondent's counsel on August 28, stating that the Region was prepared to file a Motion for Default Judgment. The Respondent's counsel responded with a voicemail on August 29, promising to file an answer by the close of business that day. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the amended complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Chicago, Illinois (the Respondent's facility) and has been engaged in the business of managing parking facilities.

About January 1, 2018, the Respondent took over the business of Park One, Inc. (Park One) at 412 South Dearborn Street, Chicago, Illinois. Since then, the Respondent has continued to operate the business of Park One in basically unchanged form and has employed as a majority of its employees individuals who were previously employees of Park One.

Based on its operations described above, the Respondent has continued the employing entity and is a successor to Park One.

[1] All dates are 2018 unless otherwise indicated.

[2] The motion for default judgment and attached exhibits indicate that the Region served a copy of the complaint and the amended complaint by certified mail, return receipt requested, on the Respondent's agent and manager, Jose Ralon, at 425 South Wells Street, Chicago, IL 60607 and by first class mail on his address at 412 South Dearborn Street, Chicago, IL 60605-1107. Although there are no returned post office receipt cards indicating delivery of the documents sent by certified mail, there is also no indication that either the regular or certified mailings were returned to the Region as unclaimed or undeliverable. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. Id.; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), enfd. sub nom. *NLRB v. Sherman*, 843 F.2d 1392 (6th Cir. 1988). Thus, the affidavits of service of the Board agent constitutes sufficient proof of service of the complaint and the amended complaint here, even in the absence of evidence of delivery from the Postal Service. See *CCY New Worktech, Inc.*, 329 NLRB 194, 194 (1999); *Best Western City View Motor Inn*, 327 NLRB 468, 469 and fn. 8 (1999); 29 C.F.R. § 102.4(a), (d).

In conducting its operations during the 12-month period ending April 30, 2018, the Respondent derived gross revenues in excess of $500,000.

During the same 12-month period, the Respondent purchased and received at its facility products, goods, and materials valued in excess of $5000 from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Employer, including, but not limited to: cashiers, hikers, attendants, porters, maintenance men/custodians, drive men, washers, collectors, customer service representatives (excluding those who do sales and/or marketing), drivers, dispatchers, bellmen, doormen and supervisors who perform bargaining unit work, but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act, who do not perform bargaining unit work.

From about September 1, 2017, until about December 31, 2017, the Union had been the exclusive collective-bargaining representative of the unit employed by Park One, and during that time, the Union had been recognized as such representative by Park One. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 1, 2016, to October 31, 2021.

Since about January 1, 2018, based on the facts described above, the Union has been the designated exclusive collective-bargaining representative of the unit.

From about September 1 to December 31, 2017,[3] based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the unit employed by Park One.

At all times since about January 1, 2018, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in the unit.

About February 21, 2018, the Union, by letter, requested that the Respondent recognize it as the exclusive collective-bargaining representative of the unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

Since about February 21, 2018, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

Since about February 21, 2018, the Union has requested in writing that the Respondent furnish the Union with the following information:

> (1) Names and hire dates of all employees from the date it began operating the 412 S. Dearborn location to the present;
>
> (2) Copies of any and all policies currently applicable to bargaining unit members, including but not limited to polices related to vacation, sick/personal time, PTO, holidays, scheduling, jury duty, funeral leave, and leaves of absences;
>
> (3) A copy of any employee handbook covering bargaining unit members; and
>
> (4) Documentation reflecting the current hourly wage rate of every bargaining unit member from the date it began operating the 412 S. Dearborn location to the present.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about February 26, 2018, the Respondent has failed and refused to furnish the Union with the requested information.

About January 1, 2018, the Respondent ceased making contributions to Teamsters Local Union No. 727 Health and Welfare Fund.

About January 1, 2018, the Respondent ceased making contributions to Teamsters Local Union No. 727 Pension Fund.

About January 1, 2018, the Respondent ceased making contributions to Teamsters Local Union No. 727 Legal and Educational Assistance Fund.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

[3] The complaint erroneously alleges this time period as September 1, 2017, to January 1, 2018.

CONCLUSIONS OF LAW

1. By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act.

2. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to recognize and bargain with the Union, we shall order the Respondent to recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, benefits, and other terms and conditions of employment and, if an understanding is reached, to embody the understanding in a signed agreement.

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with relevant and necessary information, we shall order the Respondent to furnish the Union with the information it requested on February 21, 2018.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing terms and conditions of employment of its unit employees, including by ceasing contributions to the Union's Health and Welfare, Pension, and Legal and Educational Assistance Funds since January 1, 2018, without prior notice to the Union and without affording the Union an opportunity to bargain, we shall order the Respondent to rescind the changes and retroactively restore the status quo, until the Respondent negotiates in good faith with the Union to agreement or to impasse. The Respondent shall make whole its unit employees by making all such delinquent fund contributions on behalf of unit employees that have not been made since January 1, 2018, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

Further, the Respondent shall be required to reimburse unit employees for any expenses ensuing from its failure to make the required fund contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts should be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).[4]

ORDER

The National Labor Relations Board orders that the Respondent, CC Traffic and Property Management Company LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain collectively and in good faith with Teamsters Local Union No. 727 as the exclusive collective-bargaining representative of its employees in the appropriate bargaining unit.

(b) Failing or refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.

(c) Changing the terms and conditions of employment of its unit employees by failing and refusing to make contributions to the Union's Health and Welfare, Pension, and Legal and Educational Assistance Funds since January 1, 2018, without first notifying the Union and giving it an opportunity to bargain.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the appropriate bargaining unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Furnish to the Union in a timely manner the information requested on February 21, 2018.

(c) On request of the Union, rescind the changes to unit employees' terms and conditions of employment, make contributions to the Union's Health and Welfare, Pension, and Legal and Educational Assistance Funds that have not been made since January 1, 2018, and con-

[4] To the extent that an employee has made personal contributions to a benefit or other fund that has been accepted by the fund in lieu of the Respondent's delinquent contributions to the funds during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to any amount that the Respondent otherwise owes the funds.

tinue to make those contributions until negotiating with the Union to agreement or impasse.

(d) Make the unit employees whole for any expenses ensuing from its failure to make contributions to the Union's Health and Welfare, Pension, and Legal and Educational Assistance Funds since January 1, 2018, in the manner set forth in the remedy section of this decision.

(e) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2018.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 24, 2019

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All employees, including, but not limited to: cashiers, hikers, attendants, porters, maintenance men/ custodians, drive men, washers, collectors, customer service representatives (excluding those who do sales and/or marketing), drivers, dispatchers, bellmen, doormen and supervisors who perform bargaining unit work, but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act, who do not perform bargaining unit work.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is necessary and relevant to the performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT change the terms and conditions of employment of our unit employees by failing and refusing to make contributions to the Union's Health and Welfare, Pension, and Legal and Educational Assistance Funds without first giving notice to and bargaining with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL recognize and, on request, bargain with the Union as the exclusive representative of the employees in the above-described unit concerning terms and condi-

tions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL furnish to the Union in a timely manner the information it requested on February 21, 2018.

WE WILL, on request of the Union, rescind changes to the terms and conditions of employment of the employees in the above-described unit, make contributions to the Union's Health and Welfare, Pension, and Legal and Educational Assistance Funds that have not been made since January 1, 2018, and continue to make those contributions until we negotiate in good faith with the Union to agreement or to impasse.

WE WILL make unit employees whole, plus interest, for any losses caused by our failure to make the required fund contributions.

CC TRAFFIC AND PROPERTY MANAGEMENT COMPANY LLC

The Board's decision can be found at www.nlrb.gov/case/13-CA-215998 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.